

**STATE WATER CONTROL BOARD ENFORCEMENT ACTION  
SPECIAL ORDER BY CONSENT  
ISSUED TO  
MR. RONALD MARSHBURN**

**SECTION A: Purpose**

This is a Consent Special Order issued under the authority of Va. Code §§ 10.1-1185 and 62.1-44.15(8a) and (8d), between the State Water Control Board and Mr. Ronald Marshburn, for the purpose of resolving certain violations of environmental law and regulations.

**SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. “Va. Code” means the Code of Virginia (1950), as amended.
2. “Board” means the State Water Control Board, a permanent citizens’ board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. “Department” or “DEQ” means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. “Director” means the Director of the Department of Environmental Quality.
5. “Order” means this document, also known as a Consent Special Order.
6. “Mr. Marshburn” means Mr. Ronald Marshburn, property owner on Route 60 located near Providence Forge, in New Kent County.

7. “PRO” means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
8. “Permit” means Virginia Water Protection (VWP) Permit.
9. “ACOE” means U.S. Army Corp of Engineers.

#### **SECTION C: Findings of Fact and Conclusions of Law**

1. Mr. Marshburn currently owns a 4.3 acre parcel of property located between the east and west bound lanes on Route 60 in New Kent County (the property). The property contains wetlands and an unnamed tributary to the Chickahominy River.
2. In May 2000, at Mr. Marshburn’s request, the ACOE visited the property located adjacent to the property already owned by Mr. Marshburn on Route 60 in New Kent County between the east and west bound lanes. The purpose of the visit was to determine if wetlands were located on the property. Mr. Marshburn indicated that he was considering buying the property. The ACOE informed Mr. Marshburn that wetlands were identified on the property and that if he intended to purchase the property and develop it, he would need a permit to place fill material in the wetlands on the property.
3. In May 2002, the ACOE re-visited the property and observed recent unauthorized fill activities in the wetlands. The ACOE determined that Mr. Marshburn had purchased the property in July 2000 and had proceeded to clear and fill wetlands located on it. The ACOE issued a Cease and Desist letter to Mr. Marshburn in June 2002 for the unauthorized activities on the property.
4. In June 2002, DEQ received a report from the ACOE of the filling of wetlands without a permit on the property.
5. On July 19, 2002, DEQ met with the ACOE, Mr. Marshburn and Mr. Marshburn’s attorney on the property to observe the unauthorized fill activities and to discuss resolution of alleged violations of federal and State Water Control Board Law and Regulations.
6. At the July 19, 2002, site visit, DEQ, the ACOE, Mr. Marshburn and his attorney discussed Mr. Marshburn’s options to come into compliance. Mr. Marshburn was informed that he needed to either restore the impacted wetlands or mitigate for impacts to the wetlands at the property. If Mr. Marshburn chose to mitigate, he could either create wetlands on the property or buy credits at a wetland mitigation bank or in-lieu fund. Mr. Marshburn was also informed by both the ACOE and DEQ that he would need to submit a Joint Permit Application (JPA) for the unauthorized impacts to the wetlands on the property.
7. By letter dated September 5, 2002, Mr. Marshburn submitted to DEQ a JPA for the unauthorized impacts to wetlands that had occurred on the property. Upon DEQ review, the JPA was deemed incomplete.

8. On September 13, 2002, DEQ made another site inspection of the property.
9. On September 20, 2002, DEQ issued a NOV to Mr. Marshburn, citing alleged violations of the State Water Control Law and the VWPP Regulations which resulted in environmental impact, for the unauthorized fill of approximately 0.6 acres of wetlands on the property.
10. By letter dated September 24, 2002, DEQ notified Mr. Marshburn of the incomplete JPA for the property and requested the submittal of the additional information and the permit application fee within 30 days of the date of the letter. Mr. Marshburn was also notified by the Virginia Marine Resources Commission (VMRC) by letter dated October 8, 2002, of the incomplete JPA submitted by Mr. Marshburn requesting an after-the-fact authorization for the placement of fill on the property. VMRC informed Mr. Marshburn that the submittal of additional information would be necessary in order to continue processing his request for a JPA.
11. A meeting was held on December 9, 2002, with Mr. and Mrs. Marshburn, the ACOE, and DEQ to discuss options to resolve the violations at the property. DEQ and the ACOE discussed the option to restore the impacted wetlands or to buy credits at a wetland mitigation bank or contribute to the in-lieu fund.
12. DEQ again notified Mr. Marshburn by letter dated January 8, 2003, to submit the necessary information to complete his JPA for impacts to wetlands on the property.
13. DEQ contacted Mr. Marshburn by phone at the end of March 2003 requesting a response to the January 8, 2003 letter regarding the incomplete JPA for the property. Mr. Marshburn said that he had been out of town and had not received the letter. He requested that the letter be mailed to his work address. DEQ re-mailed the January 8, 2003 letter to Mr. Marshburn on April 24, 2003.
14. DEQ staff hand delivered to Mr. Marshburn, the JPA and information about the mitigation banks on July 23, 2003. DEQ received the completed JPA on August 4, 2003.

#### **SECTION D: Agreement and Order**

Accordingly, the Board, by virtue of the authority granted it in Va. Code § 62.1-44.15(8a) and (8d), orders Mr. Marshburn and Mr. Marshburn agrees, to perform the actions described in Appendix A of this Order. In addition, the Board orders Mr. Marshburn, and Mr. Marshburn voluntarily agrees, to pay a civil charge of \$4,200 within 30 days of the effective date of the Order in settlement of the violations cited in this Order. The payment shall note that it is being made pursuant to this order and shall be by check, certified check, money order, or cashier's check payable to "Treasurer of Virginia" and sent to:



Receipts Control  
Department of Environmental Quality  
Post Office Box 10150  
Richmond, Virginia 23240

**SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of Mr. Marshburn, for good cause shown by Mr. Marshburn, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein. This Order shall not preclude the Board or the Director from taking any action authorized by law, including, but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; and/or (3) taking subsequent action to enforce the terms of this Order. Nothing herein shall affect appropriate enforcement actions by other federal, state, or local regulatory authority, whether or not arising out of the same or similar facts.
3. For purposes of this Order and subsequent actions with respect to this Order, Mr. Marshburn admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Mr. Marshburn consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Mr. Marshburn declares he has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the State Water Control Law and he waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by Mr. Marshburn to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.

8. Mr. Marshburn shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Mr. Marshburn shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Mr. Marshburn shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Mr. Marshburn. Notwithstanding the foregoing, Mr. Marshburn agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until after the penalty has been paid in accordance with the provisions of Section D, the requirements in Appendix A have been fully and timely met, and the Regional Director or Deputy Regional Director terminates the Order in his sole discretion upon 30 days written notice to Mr. Marshburn. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Mr. Marshburn from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
12. By its signature below, Mr. Marshburn voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of \_\_\_\_\_, 2003.

\_\_\_\_\_  
Robert G. Burnley, Director  
Department of Environmental Quality

Mr. Marshburn voluntarily agrees to the issuance of this Order.

By: \_\_\_\_\_

Date: \_\_\_\_\_

Commonwealth of Virginia  
City/County of \_\_\_\_\_

The foregoing document was signed and acknowledged before me this \_\_\_\_\_day of  
\_\_\_\_\_, 2003, by \_\_\_\_\_, who is  
\_\_\_\_\_  
(name)  
\_\_\_\_\_ of the property located on Route 60 in New Kent County.  
Owner

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_.

## APPENDIX A

In order to comply with the law and regulations, and successfully mitigate or restore for the wetlands impacts on the property in New Kent County, Mr. Marshburn shall:

1. **By July 30, 2003**, complete the after-the-fact Joint Permit Application (JPA) which you submitted to this office by letter dated September 5, 2002, for impacts to 0.6 acres of wetlands on the property located on Rt. 60, in New Kent County. In order to complete the after-the-fact JPA, provide all of the information requested by our letter dated September 24, 2002.
2. **Implement and comply** with the conditions and requirements of your after-the-fact VWPP upon issuance.
3. Pursuant to this Order, submit all documentation required by this Consent Special Order to:

Cynthia Akers  
Department of Environmental Quality  
Piedmont Regional Office  
4949-A Cox Road  
Glen Allen, Virginia 23060